

18:00 1

IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF TEXAS

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DALLAS DIVISION

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UNITED STATES OF AMERICA ( NUMBER 3: 04-240-G

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VERSUS

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HOLY LAND FOUNDATION, ET AL. ( September 26, 2007

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18:00

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CONFERENCE REGARDING JUROR SYLVESTER HOLMES NOTE  
BEFORE THE HONORABLE A. JOE FISH

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A P P E A R A N C E S:

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MR. BARRY JONAS

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UNITED STATES DEPARTMENT OF JUSTICE

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NORTHERN DISTRICT OF TEXAS

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U.S. Courthouse

1100 Commerce Street

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Dallas, Texas 75242

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214/659-8600

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24 Court Reporter: Cassidi L. Casey, CSR No. 1703  
1100 Commerce Street, Rm 15D6L  
25 Dallas, Texas 75242  
214-254-3139

18:00 1

P R O C E E D I N G S:

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THE COURT: Mr. Holmes, I have this note from you, and since the court reporter is taking down what we say, let me read the note. It says, "Judge Fish, I, Sylvester Holmes, don't feel that I can give the defendants justice due to the circumstances in this case. I ask to be dismissed for this cause, Thanks, Sylvester Holmes. And it's endorsed with today's dated, September 26, 2007 by the jury foreperson.

I felt like when I received this note, Mr. Holmes, that I didn't have enough information to make a decision about your question. So can you give me more information about why you don't feel you can give the defendants justice?

MR. HOLMES: Okay. In this case since we started deliberating, we haven't gotten anywhere. Okay? It's just like it's more arguing than it is anything. Okay. I know the case is based on evidence and testimony. So in the deliberating -- And when somebody give they opinion, facts, it's just like evidence -- okay. The things we have in the juryroom is evidence. And when you bring up the evidence, they talk it down. They got their own opinion. It's like HAMAS. This is not HAMAS. Show where me where this is stated it's HAMAS, and I'm just going on recollecting of the trial. That's all I'm going

18:00 1 on, and if I need to go to some evidence, I do it. But  
2 it's like they already got their opinion. They already  
3 got their opinion made up, and I don't feel like I could  
4 give the defendant justice on that. I don't feel it  
5 because I'm to that point, like I told them, I had it.  
6 And you know when the court reporter come in there and  
7 that's when I asked her again, is this all of this  
8 evidence. Yeah. You can't do this. This is not  
9 evidence. Everything in the boxes, the first day that she  
10 came, is all of this evidence. We had a problem over just  
11 that. And it's kind of like if I say something that I'm  
12 arguing. Somebody got something back to say to you when  
13 you make a comment, and I'll go on and mention his name.  
14 William. Every time somebody has something to say he take  
18:00 15 it that he's right. There is no wrong. And I just --  
16 That's why I wrote that. I'm fed up with it. So I rather  
17 be dismissed. Like I say, I hate it and everything. I  
18 don't feel like I can give them the benefit of the doubt,  
19 you know.

20 THE COURT: If you are excused, I may have to  
21 consider replacing you with one of the alternate jurors,  
22 and you remember I told them at the time you were to begin  
23 your deliberations that they should be ready to step in if  
24 needed and that they should not discuss the case with  
25 anyone. If an alternate is substituted for you, I would

18:00 1 have to instruct the jury to begin its deliberations anew.  
2 It sounds like from what you have said they haven't gotten  
3 very far.

4 MR. HOLMES: JThey haven't gotten anywhere.

5 THE COURT: So you don't think that would be a  
6 problem if I substituted an alternate and instructed the  
7 jury to begin their deliberations?

8 MR. HOLMES: No, sir, they hadn't got anywhere.  
9 I hate to say empty. It's a difficult case they got.  
10 When you got a few that already has their mind made up.  
11 Even particular, me. I did -- I'll say this to you.  
12 Okay, what I did was I went everything guilty. I can  
13 change. I'm going to change, but you just can't go in  
14 there and say -- they innocent, they guilty. Okay, they  
18:00 15 prove the facts. Everything out of the courtroom. I'm  
16 getting it here, getting it here, and when you sit up here  
17 and put it to bring your opinion, why you did that, why  
18 you did that. I'm going on what the prosecution said.  
19 I'm going on what the defendants said. And like I told  
20 them, one day I'm with the defendant. Next day I'm with  
21 the prosecutor. Next did I'm with the defendant. Next  
22 day I'm with the prosecutor. And when I outweighed all of  
23 that, that's the way I go. But it could change. But then  
24 it started getting personal. When you go in there and try  
25 to make a point and they sit up there and say no, where

18:00 1 you going to show that up. They don't even have a clue  
2 where HAMAS started from, because they don't even want to  
3 hear it. They want to hear nothing about terrorism. They  
4 don't want to hear that. But when you got three or four  
5 that already has their mind made up, it's not served. But  
6 anyway, you got one in there, William, I hate to say it,  
7 he's the leader. Everything that's said he's just  
8 (gestures). Like I say, they haven't gotten anywhere, but  
9 I think this is best.

10 THE COURT: So to summarize what I have heard  
11 you say, you don't think you can serve anymore as a juror  
12 in this case.

13 MR. HOLMES: Yes, sir.

14 THE COURT: Okay. Well, I have to take this up  
18:00 15 with the attorneys before I can make a decision about your  
16 request to be excused, and they are at lunch right now.  
17 So it will probably be the end of the lunch recess before  
18 I let you know about your request, but we'll be back in  
19 touch with you soon.

20 (Recess)

21 THE COURT: Good afternoon, Ladies and  
22 Gentlemen. Since we were last together, I have spoken  
23 with Mr. Sylvester Holmes as the parties requested that I  
24 do, and it's my understanding that Ms. Casey has made  
25 available to you a transcript of that colloquy. It's my

18:00 1 opinion based upon that discussion with Mr. Holmes that he  
2 cannot continue as a juror in this case, but I understood  
3 the parties wanted to be heard on that matter before I  
4 made a decision. So I'm here ready to hear from you.

5 MR. CLINE: Well, your Honor, both sides have  
6 read the transcript, and I think we the defense and  
7 government were in agreement that there was not cause to  
8 excuse Mr. Holmes, but I understand further that after  
9 your colloquy with him there was some further incident  
10 involving him, and it sounds as though he was determined  
11 to leave, but I'm not sure what happened. I wonder if we  
12 could get on the record whatever after your discussion  
13 with him.

14 THE COURT: Well, I was not privy to that  
18:00 15 although it has been reported to me as well, and I'm not  
16 sure who would need to put that on the record because I'm  
17 not sure who observed it.

18 MR. CLINE: Let me ask this. We just heard  
19 about that second part right before we walked in. May we  
20 have a minute to consult? And I think we will be able to  
21 give you a unified view. I'm not sure what it is.

22 THE COURT: Okay. Let me know when you are  
23 ready.

24 (Recess)

25 MR. CLINE: Your Honor, thank you for that

18:00 1 break. I think based on the totality of circumstances  
2 it's the view of the defense -- and I understand the  
3 government as well -- it is within your discretion to  
4 excuse Mr. Holmes and we have no objection to that. We  
5 talked before about a short instruction to the jury. We  
6 wrote something up which I think the government has no  
7 problem with which is as follows: I want to take this  
8 opportunity to remind you that all of your communications  
9 with the court staff need to be in writing and signed by  
10 the foreperson. If you don't mind, your Honor, I'll hand  
11 you this sheet of paper.

12 THE COURT: Well, I don't have a problem with  
13 that except that I'm afraid we may be faced with a law of  
14 unintended consequences here. When you say communications  
18:00 15 with the court staff, they deal with the court staff every  
16 day on ordering lunch and things like that and I don't  
17 know if you really want to be involved in that?

18 MR. CLINE: In a word, no. Should we say  
19 communications with the court's staff about the case,  
20 case-related communications.

21 MS. HOLLANDER: That's clear as a bell.

22 THE COURT: Let me tell you what I contemplate  
23 will happen next. I intend to inform the Court's staff  
24 that Mr. Holmes will be excused from further service, and  
25 I then intend to substitute for him the next alternate,



18:00 1 Juror Brice O'Dell, and bring him back up, and of course,  
2 the Rules require that I instruct the jury at that point  
3 to begin their deliberations anew, and in the context of  
4 doing that I will give them this instruction which you  
5 proposed. I think all of that needs to happen in open  
6 court. So we will have to assemble all the defendants.

7 MR. JONAS: Your Honor, are you going to speak  
8 to Mr. Holmes about no contact with the parties or press?

9 THE COURT: Yes.

10 MS. HOLLANDER: The defendants are in the  
11 courtroom.

12 THE COURT: Nonetheless it will take a few  
13 minutes for us to get everyone together.

14 (Recess)

18:00 15 THE COURT: I'm sorry for the delay. I had to  
16 wait, as I told you earlier, to talk to the lawyers before  
17 I made a decision, and they were late getting back from  
18 lunch for some reason, and after consulting with you, I  
19 have decided to excuse you from further service in the  
20 case, and I am going to substitute an alternate in your  
21 place and instruct the jury to begin their deliberations  
22 anew. However, it's important to all the parties and the  
23 lawyers and everybody who's connected with this case that  
24 you not discuss the case with anyone still while the jury  
25 is deliberating. That includes anybody that you might

18:00 1 come in contact with who's interested in what's going on  
2 with the jury. You may get calls from the press if they  
3 are able to get your name and address. I hope they are  
4 not because we tried to protect the privacy of people  
5 serving on the jury, and I think so far we have succeeded,  
6 but there is a great deal of interest in the case. It's  
7 an important case, and so it is important that you not  
8 have contact with the parties, their lawyers, the press or  
9 really anyone about the case. Can you do that?

10 MR. HOLMES: I can do it.

11 THE COURT: Well, we appreciate your service in  
12 the case. I'm sorry it had to end in this fashion.

13 MR. HOLMES: I hate it, too. But I got to get  
14 out of there. I don't want to start no arguments. They  
18:00 15 say I'm arguing -- just -- That's it. Thanks a lot,  
16 Judge.

17 THE COURT: When you leave this floor, you need  
18 to go back to the jury assembly room on the first floor  
19 and talk to the jury administrator and tell her your  
20 service in this case is over.

21 (Recess)

22 THE COURT: Good afternoon, Ladies and  
23 Gentlemen. I brought you back into the courtroom to  
24 announce that I have decided to excuse from further  
25 service in this case one of your number, Mr. Sylvester

18:00 1 Holmes, and to substitute in his place and Alternate  
2 Juror, Mr. Brice O'Dell. You may remember when we were  
3 last together I told you that the law does not permit the  
4 alternates to participate in the deliberations unless they  
5 are substituted for a regular juror who's excused, and so  
6 we are at that point now, but as will probably not be  
7 surprising to you since Mr. O'Dell has not had the benefit  
8 of participating in your deliberations to this point, I  
9 must now instruct you to begin your deliberations anew so  
10 that all of you will be starting from the same point in  
11 your deliberations. It's been now a week I guess since we  
12 were last together and I gave you my instructions which as  
13 you remember were the stack of documents which look like  
14 the phone directory for a small city, and I read some of  
18:00 15 those instructions to you until my voice gave out, and Ms.  
16 Hudson completed the reading of the instructions. I want  
17 to suggest to you that it might be a good starting point  
18 in beginning your deliberations -- since it's been a  
19 week -- that you commence your deliberations by going over  
20 those instructions again so that everybody will be  
21 starting from the same place, and I think that might be  
22 helpful in commencing your deliberations. I also wanted  
23 to take this opportunity to remind you that all of your  
24 communications with the Court's staff about this case need  
25 to be in writing and signed by your foreperson.

18:00 1 And Ladies and Gentlemen, that completes my  
2 instructions to you now, and we'll return you to the  
3 juryroom to begin your deliberations.

4 (Jury out)

5 THE COURT: Do the parties have objections to  
6 the supplementary instructions I have just given the jury  
7 verbally?

8 MR. JACKS: Not from the government, your Honor.

9 MS. HOLLANDER: No, sir, not from the defense.

10 THE COURT: I think the record should reflect  
11 that after I met with counsel a short while ago in my  
12 conference room, I did immediate individually with Mr.  
13 Sylvester Holmes in the presence of Ms. Casey and  
14 instructed him that he should not discuss this case with  
18:00 15 anyone but particularly the parties or their attorneys or  
16 the media while the jury is continuing its deliberations,  
17 and he said he understood those instructions and would  
18 follow them. Ms. Casey can produce a transcript of that  
19 colloquy if you are interested in seeing it.

20 Is there anything else we need to take up while  
21 we're all together?

22 MR. JACKS: No, sir.

23 MS. HOLLANDER: No, sir.

24 THE COURT: We'll be in recess while the jury  
25 deliberates.

18:00 1

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I, Cassidi L. Casey, certify that during the proceedings of the foregoing-styled and -numbered cause, I was the official reporter and took in stenotypy such proceedings and have transcribed the same as shown by the above and foregoing Pages 1 through 13 and that said transcript is true and correct.

I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

s/Cassidi L. Casey

---

CASSIDI L. CASEY  
UNITED STATES DISTRICT REPORTER  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION  
CSR NUMBER 1703

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